

EXHIBIT 1

INTRODUCTION

At all times relevant, Respondent Black Men & Women (the “BMW”) was a general-purpose committee, and Respondent George Livingston was the treasurer for Respondent BMW.

At all times relevant, Nathaniel “Nat” Bates was a city council member for the City of Richmond. Richmond City Councilman Nat Bates (the “Council Committee”) was the controlled committee established to support Nathaniel Bates’ re-election to the city council in the 1999 general election. Nat Bates for Mayor (the “Mayoral Committee”) was the controlled committee established to support Nathaniel Bates’ candidacy for Mayor of the City of Richmond in the 2001 general election.

The Political Reform Act (the “Act”)¹ requires candidates, their controlled committees, and the treasurers of those committees, to file campaign statements at specific times disclosing information regarding contributions received and expenditures made by the committees. The Act also requires general purpose committees to file campaign statements at specific times disclosing information regarding contributions received and expenditures made by the committees. Based upon a complaint received by the Commission describing potential violations of the campaign reporting provisions of the Act, Commission staff investigated Respondent BMW, Nathaniel Bates, Council Committee, and Mayoral Committee. The investigation revealed that Respondents BMW and George Livingston failed to properly disclose contributions that Respondent BMW made to Nathaniel Bates and his controlled committees.

For the purposes of this Stipulation, Respondents’ violations of the Act are stated as follows:

COUNT 1: Respondents Black Men & Women and George Livingston failed to properly disclose a \$2,011 contribution to Nathaniel Bates and Richmond City Councilman Nat Bates, on a pre-election campaign statement filed on October 21, 1999, in violation of section 84211, subdivision (j)² of the Government Code.

COUNT 2: Respondents Black Men & Women and George Livingston failed to disclose a \$1,487 late contribution to Nathaniel Bates and Richmond City Councilman Nat Bates, in a properly filed late contribution report, by the October 23, 1999 due date, in violation of section 84203 of the Government Code.

COUNT 3: Respondents Black Men & Women and George Livingston failed to properly

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

² Section 84211 was amended in 2000, effective January 1, 2001, and some of its subdivisions were re-lettered and re-numbered. The citations to section 84211, subdivision (j) are in reference to that section as it was lettered and numbered at the time of the violation prior to the amendment.

disclose \$10,170 contribution to Nathaniel Bates and Nat Bates for Mayor, on a pre-election campaign statement filed on October 25, 2001, in violation of section 84211, subdivision (k)³ of the Government Code.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in section 81002, subdivision (a), is to ensure that all contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and so that improper practices will be inhibited. The Act therefore establishes a campaign reporting system designed to accomplish these purposes of disclosure.

Definition of Committee under the Act

Section 82013, subdivision (a) defines a “committee” to include any person or combination of persons that receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year. This kind of committee is commonly referred to as “recipient committee.” Under Section 82027.5, subdivision (c), a recipient committee that is formed or exists “to support or oppose candidates or ballot measures voted on in only one city” is a “city general purpose committee.”

Duty to File Pre-election Statements

Section 84200.5, subdivision (f)(2) requires that city general purpose committee which has an election on a date, other than the first Tuesday after the first Monday in June or November of an even numbered year, and their controlled committees, must file pre-election campaign statements in accordance with section 84200.8. Section 84200.8, subdivision (a) requires that a first pre-election campaign statement be filed no later than 40 days before the election, for the reporting period ending 45 days before the election. Section 84200.8, subdivision (b) requires that a second pre-election campaign statement be filed no later than 12 days before the election, for the reporting period ending 17 days before the election.

Duty to File Late Contribution Reports

Under section 84203, subdivision (a), when a committee makes or receives a late contribution, the committee must disclose the contribution in a late contribution report that must be filed within 24 hours of making or receiving the contribution. Section 82036 defines a “late contribution” as a contribution aggregating \$1,000 or more that is made to or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate or measure before the date of the election at which the candidate or measure is to be voted on, but after the closing date of the last campaign statement required to be filed

³ See footnote 2 above. This citation to section 84211, subdivision (k) is in reference to that section as it was lettered and numbered at the time of the violation after the amendments to section 84211 in 2000.

before the election. Under Section 84200.8, subdivision (b), for an election not held in June or November of an even-numbered year, the late contribution period covers the last 16 days before the election.

Contributions, Expenditures, Independent Expenditures, and Behesting

Under regulation 18215, subdivision (b)(3), a contribution includes: “[a]ny goods or services received by or *behested* by a candidate or committee at no charge or at a discount from the fair market value, unless the discount is given in the regular course of business to members of the public.” [Emphasis added.]

Under regulation 18225, subdivision (b), an expenditure “includes any monetary or non-monetary payment made by any person, other than those persons or organizations described in subsection (a), that is used for communications which expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates...”

Under section 82031, an independent expenditure “means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but *which is not made to or at the behest of* the affected candidate or committee.” [Emphasis added.]

Based on the above provisions, as consistently applied in advice by the Commission, when what would otherwise be an independent expenditure is “behested” by a candidate, as that term is defined in regulation 18225.7, it is a contribution to that candidate. (*Reese Advice Letter*, No. A-02-016.)

Regulation 18225.7⁴ states in pertinent part:

- (a) "Made at the behest of" means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of. Such arrangement must occur prior to the making of a communication described in Government Code section 82031.
- (b) An expenditure is presumed to be made at the behest of a candidate if it is:
 - (1) Based on information about the candidate's or committee's campaign needs or plans provided to the expending person by the candidate, committee, or agents thereof; or
 - (2) Made by or through any agent of the candidate or committee in the course of their involvement in the current campaign.
- (c) An expenditure is not made at the behest of a candidate or

² Regulation 18225.7 was amended effective April 6, 2003. Regulation 18225.7 is set forth herein as it existed at the time of the alleged violations, prior to that amendment.

committee merely when:

- (1) A person interviews a candidate on issues affecting the expending person, provided that prior to making a subsequent expenditure, that person has not communicated with the candidate or the candidate's agents concerning the expenditure; or
- (2) The expending person has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate's agents.

Reporting Expenditures and Contributions

Section 84211 prescribes the required contents of campaign statements that must be filed by candidates and committees. For each expenditure of \$100 or more made by a candidate or recipient committee during a reporting period, the campaign statement for that reporting period must provide descriptive information, including: the full name of the person to whom the expenditure was made; the person's street address; the amount of the expenditure; and a brief description of the consideration for which the expenditure was made; and additionally, for an expenditure which is a contribution to candidate, the date of the contribution, the cumulative amount of contributions made to the candidate, the candidate, the office sought by the candidate, and the applicable jurisdiction. (Section 84211, subds. (k)(1)-(5).)⁵

Treasurer Liability

Under section 84100 and regulation 18427, subdivision (a), a committee's treasurer has the duty to ensure compliance with all requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. Pursuant to sections 83116.5 and 91006, the treasurer of a committee may be held jointly and severally liable, along with the committee, for the committee's reporting violations.

SUMMARY OF FACTS

COUNTS 1 & 2

Introduction

At all times relevant, Respondent BMW was a city general-purpose committee, and Respondent George Livingston was the treasurer for Respondent BMW. At all times relevant, Lonnie Washington was the President of Respondent BMW.

At all times relevant, Nathaniel Bates was a city council member for the City of Richmond. The Council Committee was the controlled committee of Nathaniel Bates formed to

⁵ See footnote 2 above. This citation to section 84211, subdivision (k) is in reference to that section as it was lettered and numbered after the amendments to section 84211 in 2000. The subject amendments did not change the substantive requirements of former subdivision (j).

support his re-election to the Richmond City Council in the November 2, 1999 general election.

Counts 1 and 2 arise from the production and distribution of campaign mailers regarding local sewer issues that were paid for by Respondent BMW. A summary of the facts supporting the conclusion that Nathaniel Bates behested these expenditures made by BMW for purposes of Counts 1 and 2 is set forth below.

Nathaniel Bates' Relationship with Respondent BMW

Nathaniel Bates was a founding member of Respondent BMW in the early 1980's. He remained a member of Respondent BMW until May 15, 1999, when he submitted a written resignation from Respondent BMW in anticipation of his upcoming city council election, and based on his belief that candidates were prohibited "from being members of independent committees who will be active in the Richmond City Council election." Despite his resignation, as set forth below, he continued to play a very active role on behalf of Respondent BMW in a number of its activities.

On August 21, 1999, Nathaniel Bates sent a letter on BMW letterhead soliciting attendance at a fundraiser for then-San Francisco Mayor Willie Brown.

Nathaniel Bates also coordinated a golf tournament on behalf of Respondent BMW to raise money for voter education and/or "get out the vote" efforts. On September 29, 1999, Nathaniel Bates arranged for Respondent BMW to pay for a freezer and food that was donated to the Hacienda Housing Development in Richmond.

On October 5, 1999, at a Richmond City Council meeting, Nathaniel Bates presented BMW jackets to five individuals for their life-saving efforts at a local fire scene. At that same city council meeting, on behalf of BMW, Nathaniel Bates presented a plaque and a check to a local citizen for heroic acts.

Coordination and Cooperation Between Nathaniel Bates and Respondent BMW in Developing and Sending Sewer Issue Mailers

Greg Reese was an unpaid campaign worker for Nathaniel Bates' campaign for re-election to the Richmond City Council during the 1999 general election. Specifically, Greg Reese worked on campaign strategy; did photography, layout work, and writing for campaign literature; and worked with Nathaniel Bates on what to include in campaign literature. Nathaniel Bates and Greg Reese made the decision to use Scanart for the design and layout of Nathaniel Bates' campaign mailers. Nathaniel Bates consulted only with Greg Reese about the use of Ireland Direct Mail for sending the campaign mailers. Greg Reese was the person on Nathaniel Bates' campaign who worked directly with Scanart on the production of campaign literature and with Ireland Direct Mail on sending the campaign mailers.

During the same 1999 general election period, Greg Reese also designed campaign mailers for Respondent BMW. Respondent BMW held several meetings and decided to send out

three campaign mailers regarding local sewer in connection with the 1999 Richmond City Council election. Greg Reese attended three or four of those BMW meetings, where the design of the campaign mailers and decisions on which candidates to support were discussed.

Respondent BMW paid for a series of three sewer issue mailers to be produced and mailed out to the voters in Richmond between September 13, 1999 and October 16, 1999. The investigation determined one of the three sewer issue mailers was done in support of Nathaniel Bates as a candidate for city council, along with several other city council candidates. Scanart, the same vendor used by Nathaniel Bates for his mailers, performed the design and layout work for the three mailers. Greg Reese selected Scanart and arranged for it to do the work on the three sewer issue mailers for Respondent BMW. Greg Reese also arranged for Ireland Direct Mail, the same vendor used by Nathaniel Bates for his mailers, to do the mailing of Respondent BMW's three sewer issue mailers.

On October 22, 1999, Respondent BMW paid for another sewer issue mailer in addition to the previous series of three, entitled "Pot of Gold," to be produced and mailed out to the voters in Richmond. The "Pot of Gold" mailer featured and touted certain city council candidates, including Nathaniel Bates, for their vote against a sewer rate increase. Scanart performed the services necessary to the production and mailing of Respondent BMW's "Pot of Gold" mailer.

Respondent BMW received loans from its directors in late October of 1999 to defray the cost of the mailers and/or literature put out by Respondent BMW during the 1999 general election. Nathaniel Bates made a \$500 loan to Respondent BMW on October 27, 1999, in his capacity as a "BMW Director."

Application of the Regulation 18227.5 to the Facts

As discussed above, Nathaniel Bates continued to Act in the capacity of BMW Director for numerous official activities of the organization, notwithstanding his resignation from Respondent BMW. These facts demonstrate his continuing "cooperation" with, if not "control" of, Respondent BMW's campaign activities on his behalf. His providing a loan to Respondent BMW to defray the costs of its campaign literature further shows "cooperation," and additionally shows his "prior consent" to Respondent BMW's campaign activities on his behalf. Most importantly, the involvement of Greg Reese as an unpaid campaign worker for the Bates campaign in campaign strategy; photography, layout work, writing for campaign literature, and vendor selection, while he was also performing a very similar function for BMW in its campaign activities in support of the Bates campaign, establishes that the expenditures by Respondent BMW were made at the behest of Nathaniel Bates. As Reese was acting as an agent of the Bates campaign while also acting as an agent of Respondent BMW, he had information about the plans and needs of the Bates' campaign when he performed the work for Respondent BMW. Based on the totality of these facts, it must be concluded that the expenditures made by Respondent BMW for the several issue mailers that supported the Bates campaign were made at the behest of Nathaniel Bates.

Local Campaign Contribution Limits

As discussed above and specifically set forth below in relation to Counts 1 and 2, Respondent BMW made behested expenditures in support of Nathaniel Bates, constituting aggregate contributions to him of \$3,498. During the 1999 general election, the City of Richmond had campaign contribution limits in place that prohibited any person from making a campaign contribution in excess of \$2,500 to any candidate for city office, and prohibited any candidate for city office from accepting from any person, a campaign contribution in excess of \$2,500.

COUNT 1
Failing To Properly Report a Contributions of \$2,011

Between September 13, 1999 and October 16, 1999, Respondent BMW made payments totaling \$6,033.94 for postage, layout, printing, and labels for the second sewer issue mailer in the series of three referenced above. The second sewer issue mailer, entitled “How Can Twin Sewer Districts Be So Different?,” featured and touted city council candidates Nathaniel Bates, Karen Ortega, and Dale Paulson for their vote against a sewer rate increase. The mailer was disseminated to the voters of the City of Richmond.

The Bates campaign’s one-third share of the cost of the mailer was \$2,011.31. On Respondent BMW’s pre-election campaign statement filed on October 21, 1999, Respondents BMW and George Livingston reported the payments for producing and sending the second sewer issue mailer as independent expenditures supporting the above three city council candidates.

As set forth above, there was an ongoing cooperative and coordinated relationship between Nathaniel Bates, Greg Reese, and Respondent BMW, such that the payments made by Respondent BMW for the second sewer issue mailer were “made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of” Nathaniel Bates. Therefore, the payments made by Respondent BMW for the second sewer issue mailer were “behested” by Nathaniel Bates, and his share of the cost of the mailer was required to be disclosed as a contribution to Nathaniel Bates and the Council Committee.

By failing to properly report the contribution to Nathaniel Bates on the pre-election campaign statement filed on October 21, 1999, Respondents BMW and George Livingston violated section 84211, subdivision (j).

COUNT 2
Failing To Properly Report a Late Contribution of \$1,487

On October 22, 1999, Respondent BMW made payments totaling \$5,947.96 for postage, layout, printing, labels, and mailing for the “Pot of Gold” mailer. This mailer featured and touted city council candidates Nathaniel Bates, Karen Ortega, Dale Paulson, and Jim Rogers for their

opposition to a sewer rate increase. The mailer was disseminated to the voters of the City of

Richmond.

The Bates campaign's one-fourth share of the cost of the Pot of Gold mailer was \$1,486.99. On Respondent BMW's late independent expenditure report filed on October 23, 1999, Respondents BMW and George Livingston reported one-fourth of the payments for postage, layout and printing, labels, and mailing for the Pot of Gold mailer as independent expenditures in support of Nathaniel Bates.

As set forth above, there was an ongoing cooperative and coordinated relationship between Nathaniel Bates, Greg Reese, and Respondent BMW, such that the payments made by Respondent BMW for the Pot of Gold mailer were "made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of Nathaniel Bates. Therefore, the payments made by Respondent BMW for the Pot of Gold mailer were behested by Nathaniel Bates, and his share of the cost was required to be disclosed as a late contribution to Nathaniel Bates and the Council Committee on a late contribution report.

By failing to properly report the contribution made to Nathaniel Bates on a properly filed late contribution report, Respondents BMW and George Livingston violated section 84203.

COUNT 3 **Introduction**

Nathaniel Bates was an unsuccessful candidate for Mayor of the City of Richmond in the November 6, 2001 general election. At all times relevant, the Mayoral Committee was the controlled committee supporting Nathaniel Bates' candidacy for Mayor of the City of Richmond in the 2001 general election.

Count 3 arises from the production and distribution of a campaign mailer paid for by Respondent BMW. The campaign expenditures for this mailer were made at the behest of Nathaniel Bates and the Mayoral Committee. A summary of the facts supporting the "behesting" of these expenditures for purposes of Count 3 is set forth below.

Coordination and Cooperation Between the Mayoral Committee and Respondent BMW in Developing and Sending the Flag Mailers

On October 1, 2001, Respondent BMW made payments totaling \$10,169.63 for postage, layout, printing, labels, and mailing for a mailer (the "Flag mailer"), featuring Nathaniel Bates next to the American flag with text including an ostensibly inspirational message reflecting on the "9/11" attacks. The Flag mailer included a statement to the effect that additional copies could be obtained from the "Bates for Mayor Headquarters."

Prior to the Flag mailer being sent, Lonnie Washington, the President of Respondent BMW, discussed the development of the Flag mailer with Nathaniel Bates, who made a contribution of \$100 to Respondent BMW to help with the cost of the Flag mailer. The \$100

contribution from Nathaniel Bates to Respondent BMW was subsequently refunded to him to avoid the appearance of collaboration.

Application of Regulation 18227.5 to the Facts

As discussed above, the meeting between Nathaniel Bates and Lonnie Washington regarding the Flag mailer and Nathaniel Bates' would-be contribution to Respondent BMW to help defray the costs of the Flag mailer demonstrates both "cooperation" in, and "prior consent" to, the production and distribution of the Flag mailer. Most importantly, the inclusion of the notation on the Flag mailer to the effect that additional copies of the Flag mailer could be obtained from the "Bates for Mayor Headquarters," unequivocally establishes "coordination and cooperation" between Nathaniel Bates and Respondent BMW in the production and distribution of the Flag Mailer. Based on the totality of these facts, it must be concluded that the expenditures made by Respondent BMW for the Flag mailer were made at the behest of Nathaniel Bates.

Local Campaign Contribution Limits

As set forth below, Respondent BMW made behested expenditures in support of Nathaniel Bates totaling \$10,170. During the 2001 general election, the City of Richmond had campaign contribution limits in place that prohibited any person from making to any candidate for city office, and prohibited any candidate for city office from accepting from any person, a campaign contribution in excess of \$2,500.

COUNT 3 **Failing To Properly Report a Contribution of \$10,170**

On or about October 1, 2001, Respondent BMW made payments totaling \$10,169.63 for postage, layout, printing, labels, and mailing of the Flag mailer referenced above. The Flag mailer was disseminated to the voters of the City of Richmond.

On Respondent BMW's pre-election statement filed on October 25, 2001, Respondents BMW and George Livingston reported the payments for producing and sending the Flag mailer as independent expenditures supporting the Mayoral Committee.

As set forth above, there was an ongoing cooperative and coordinated relationship between Nathaniel Bates, Lonnie Washington, and Respondent BMW, such that the payments made by Respondent BMW for the Flag mailer were "made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of" Nathaniel Bates. Therefore, the payments made by Respondent BMW for the Flag mailer were "behested" by Nathaniel Bates, and the total cost of the mailer was required to be disclosed as a contribution to Nathaniel Bates and the Mayoral Committee.

By failing to properly report the contribution to Nathaniel Bates on the pre-election

campaign statement filed on October 25, 2001, Respondents BMW and George Livingston violated section 84211, subdivision (k).

CONCLUSION

This matter consists of three counts, which carry a maximum possible administrative penalty of Nine Thousand Dollars (\$9,000).

The violations are serious, in that they involve numerous incorrectly reported contributions in a local jurisdiction. The seriousness of the violations is compounded by the fact that the local jurisdiction had contribution limits in place which were exceeded by virtue of these improperly reported contributions. The violation set forth in Count 3 is particularly serious in that it involves a much greater amount not properly reported, and it was the third in this series of violations.

However, while the evidence in this matter clearly establishes that the expenditures were behested by Respondent Nathaniel Bates and therefore should have been reported as contributions, Respondent BMW believed that Nathaniel Bates had taken sufficient measures to fall outside of the regulatory definition of behesting, and, therefore, had no duty to report BMW's expenditures as contributions to the Bates campaign. Respondents also have no history of enforcement actions being taken against them for violating the Act.

The facts of this case, as well as the aforementioned factors, justify imposition of the agreed upon administrative penalty of Three Thousand Dollars (\$3,000) for Counts 1 and 2 and Four Thousand Dollars (\$4,000) for Count 3.